

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 Cvs 1488

ROBERT N. PULLIAM, CPA/ABV
PLLC, as successor in interest to
PULLIAM FINANCIAL GROUP,
PLLC,

Plaintiff,

v.

AMY S. GARDNER; GARDNER
RENTALS, LLC; JAMES GARDNER;
AMY S GARDNER, CPA, PLLC; and
LINDSAY & GARDNER, CPA, LLP,

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' NOTICE OF
DESIGNATION
OF ACTION AS MANDATORY
COMPLEX BUSINESS
CASE UNDER
N.C. GEN. STAT. § 7A-45.4**

COME NOW the defendants, by and through their attorneys, and pursuant to Business Court Rule 3, and hereby respond to the Plaintiff's Opposition to Defendants' Notice of Designation of Action as a Mandatory Complex Business Case under N.C.G.S. § 7A-45.4 as follows:

1. As stated in Defendants' Notice of Designation of Action as Mandatory Complex Business Case under N.C.G.S. § 7A-45.4, the Court will be asked to address the liability, if any, of defendant Amy S. Gardner, CPA, PLLC, a professional limited liability company whose sole member is Amy Gardner, for the prior debt of a member of that professional corporation, based on the alleged transfer of the accounting practice. Additionally, the Court will be asked to consider the liability, if any, of defendant Lindsay & Gardner, CPA, LLP for the debt of a member of one of its corporate partners.

2. In opposition to the designation, plaintiff equates the legal issues addressed in this to those in the underlying action, Robert N. Pulliam, CPA/ABV, PLLC,

as successor in interest to Pulliam Financial Group, PLLC v. Amy S. Gardner and Brendle Shaffner & Associates, P.A., 05 CvS 7004 (hereinafter "Pulliam 1") lately pending in the General Court of Justice of Forsyth County, Superior Court Division, those issues being "whether Gardner again transferred the accounting practice she took from the plaintiff to other corporate entities." (Pl.'s Opposition to Def.'s Notice of Designation ¶ 4). Issues previously litigated in Pulliam 1 are not at all germane to the issues presented in the current case ("Pulliam 2"). The only factor from Pulliam 1 that is germane in Pulliam 2 is that the Plaintiff in Pulliam 2 is a judgment creditor of the individual, Amy S. Gardner, by virtue of a determination made in Pulliam 1. However, the source of Plaintiff's judgment is not relevant to the issues in Pulliam 2. The issues in Pulliam 2 will be the same notwithstanding the origin of the judgment. If the Plaintiff in Pulliam 2 takes a contrary position, then it is attempting to recover for that which served as the basis for the entry of the judgment in Pulliam 1.

3. Defendants' meet the threshold issue in Business Court obtaining jurisdiction of this matter which is whether the case involves a material issue related to the governance of limited liability companies simply by parroting the allegations in the Complaint. Specifically, as to Defendant Amy Gardner the Complaint alleges she "created Gardner PLLC as a shell corporation designed to hold a 50% interest in Lindsay & Gardner;" "intentionally undercapitalized Gardner PLLC, has failed to observe corporate formalities and has exercised actual and complete dominion and control over Gardner PLLC." (Complaint ¶¶ 61, 62). These allegations relate to the governance of a single member professional limited liability company by a judgment debtor which falls squarely within the scope and requirement of N.C.G.S. § 7A-45.4.

3. These issues will require application and interpretation of the law on formation, operation and governance of the defendants' entities in light of the facts alleged in the Complaint or developed through discovery.

4. The Business Court is an appropriate entity to address the liability of other corporations for another corporate debt, particularly where there are allegations of fraudulent transfer, as there are in this case.

5. The Business Court has addressed issues involving fraudulent transfers. Particularly of interest is the exercise of the Business Court's jurisdiction, as evidenced in Maloney v. Alliance Dev. Group, LLC, 2006 WL 2787895 (N.C. Super. 2006). According to an opinion issued in that case, the plaintiff settled a matter with Alliance Development Group, LLC, which provided that Alliance Development Group, LLC would make a substantial cash payment to plaintiff. Before the payment, Alliance Development Group, LLC transferred its assets to the other defendants. Plaintiff made claims that the defendants engaged in fraudulent transfers and sought injunctions and an appointment of a receiver under the Uniform Fraudulent Transfer Act. See Maloney v. Alliance Dev. Group, LLC, 2006 WL 2787895 (N.C. Super. 2006). The Business Court also exercised jurisdiction where the plaintiffs made claims that a defendant dissolved itself and transferred its assets to another corporate defendant, as evidenced in Lawrence v. Umlie-Five Corp., 2007 WL 2917465 (N.C. Super. 2007) and Lawrence v. Umlie-Five Corp., 2007 WL 2570256 (N.C. Super. 2007). Plaintiff sought to enforce his Texas judgment against Umlie-Five Corp. against the other defendants, alleging theories of breach of fiduciary duty, fraud, unfair and deceptive trade practices and fraudulent

transfer. See Lawrence v. Umlic-Five Corp., 2007 WL 2917465 (N.C. Super. 2007); Lawrence v. Umlic-Five Corp., 2007 WL 2570256 (N.C. Super. 2007).

6. As in Lawrence and Maloney, the Business Court is an appropriate venue for the above captioned matter, where creditors seek to enforce judgments and other obligations against corporate entities, asserting claims under the Uniform Fraudulent Transfer Act and Chapter 75 of the North Carolina General Statutes.

7. Plaintiff's allegations that the Forsyth County Superior Court is a proper venue are inapposite. Generally, complaints are not originally filed in Business Court. Under Rule 2.1 of the General Rules of Practice, the Business Court's jurisdiction is invoked on assignment by the Chief Justice of the North Carolina Supreme Court, usually upon designation by the Senior Resident or Presiding Superior Court Judge or upon motion of any party. Accordingly, the local county Superior Court is always initially a proper venue; however, because the local county is a proper venue does not eliminate the Business Court's jurisdiction under the statutes and rules.

8. This matter is appropriate in Business Court because this case involves the application and interpretation of the law on formation, operation and governance of limited liability companies and limited liability partnerships and the rights of judgment creditors of individual members to assert claims against the assets of the professional limited liability corporations and professional limited liability partnerships.

WHEREFORE, defendants pray that the Business Court retain jurisdiction over this matter and that the Court grant unto the defendants such other and further relief as the Court may deem just and proper.

This the 25th day of March, 2009.

/s/ Rachel S. Decker

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Plaintiff herein via electronic mail and by depositing a copy thereof in a depository of the U.S. Postal Service, postage prepaid, addressed to the following:

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This the 25th day of March, 2009.

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